

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	14-CR-110-1
Plaintiff	:	
vs.	:	Philadelphia, Pennsylvania
	:	September 29, 2014
CHRISTOPHER STEELE,	:	
a/k/a "Mike Dozer"	:	
	:	JURY TRIAL - DAY I
Defendant	:	

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BEFORE THE HONORABLE JUAN R. SANCHEZ
UNITED STATES DISTRICT JUDGE
and a Jury

- - -

APPEARANCES:

For the Government: MICHELLE ROTELLA, ESQUIRE
UNITED STATES ATTORNEY'S OFFICE
615 Chestnut Street, Suite 1250
Philadelphia, Pennsylvania 19106

For the Defendant: KEVIN MARK WRAY, ESQUIRE
200 West Front Street
Media, Pennsylvania 19063

ALSO PRESENT: Paul Lombardi
Jury Administrator

- - -

Deputy Clerk: Stacy Wertz

ESR Operator: Patrick Kelly

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1 (At 9:41 a.m. in Courtroom 11a.)

2 ESR OPERATOR: All rise.

3 Count is now in session, the Honorable Juan R. Sanchez
4 presiding.

5 THE COURT: All right. You may be seated.

6 MS. ROTELLA: Good morning, your Honor.

7 (Pause.)

8 THE COURT: Okay. Very well.

9 A couple of things that I think we need to discuss.

10 Number one is the motion *in limine* that was just filed
11 in this case. Counsel, I'm going to address that very quickly.

12 And secondly, I think that we need to talk a little
13 bit about jury selection.

14 And third, we need to talk a little bit about the
15 Federal Detention policy with regards to clothing. I am going
16 to encourage you to take a look, read the policy and follow
17 their policy, okay.

18 I am not going to be delaying at trial -- and we're
19 already delayed forty -- forty minutes. We were supposed to
20 start promptly at 9:00. So, please follow the policies and read
21 them very carefully. I believe, they're posted, number one.

22 Going backwards, with regards to jury selection, my
23 understanding is that your client wishes to participate in jury
24 sel -- in -- in the drawing of the panel?

25 MR. WRAY: Yes.

1 THE COURT: All right.

2 It's going to take thirty nanoseconds for him to
3 participate, we are going to do it in this courtroom. We have
4 the technology and it's just how to draw the numbers. So, it's
5 going to be done right here in the courtroom, because he's in
6 custody.

7 Number three -- number -- No. 1, I will address the
8 motion *in limine* before we get started. And I think there is
9 also a pending motion for bail.

10 MR. WRAY: Yes, your Honor.

11 THE COURT: Okay.

12 I scheduled it, but quite frankly, my understanding is
13 that your client has not posted bail in state court, which is
14 posted at a million dollars, am I correct on that?

15 MR. WRAY: You are correct, your Honor.

16 THE COURT: All right.

17 So, while I have listed the case for a bail hearing,
18 I'm going to pass the bail hearing until after the trial,
19 because this trial is going to be over by the end of the week
20 and the verdict may render it moot.

21 MR. WRAY: Understood.

22 THE COURT: Okay. Agree?

23 MS. ROTELLA: Yes, sir.

24 THE COURT: In any event, you have a heavy burden to
25 establish that you're entitled to bail.

1 So, it's going to be in about five or ten minutes. I
2 think the panel should be ready in about five or ten minutes, I
3 think. So, would you hold on?

4 MR. WRAY: Sure.

5 THE COURT: All right.

6 So, tell me, it is your motion?

7 MR. WRAY: It is, your Honor.

8 THE COURT: All right.

9 The Third Circuit case law is pretty clear, I think,
10 that a non-expert under Rule 701, can't testify, because all
11 they -- they're doing is taking what is admissible evidence in
12 this case, the records of the cell phone belonging to your
13 client and taking the records that the AT -- MT has produced and
14 mapping them. They're not expressing any opinion, whatsoever,
15 as to the location or the whereabouts of your client's camp,
16 precisely, indicators -- show a proof of where your client was
17 at that particular date and time. Right?

18 MR. WRAY: Ah, to some degree, your Honor, ah --

19 THE COURT: To some degree?

20 MR. WRAY: -- ah, first of all, the phone is in the
21 name of Bobby Steele, though it was paid by Bobby Steele, my
22 client to my knowledge, has never admitted that that cell phone
23 belongs to him.

24 If it were to be connected to him and say, this is the
25 phone that you've been using, the Government wishes to map out

1 where the cell-powered locations where ping data was taken.

2 THE COURT: Right.

3 MR. WRAY: It -- the --

4 THE COURT: For that phone, so -- so, if -- if your
5 client claims that he was not using --

6 MR. WRAY: That --

7 THE COURT: -- that phone, so you -- could not hear
8 that to the jury, that's -- that has no relevance --

9 MR. WRAY: I -- could not, your Honor.

10 THE COURT: -- so, it doesn't mean anything in this
11 case, it doesn't tie your client in to a particular date or
12 time, right?

13 MR. WRAY: That would be -- make it completely
14 irrelevant. And if the Court were to consider that relevant,
15 all -- all that data relevant with the ping data, your Honor,
16 cell-phone towers are radio transmitters and the technology is
17 not simply, it goes to closest one.

18 If you'd read me -- the second or third page of my --
19 my motion and argument, a cell phone pings off of the strongest
20 signal at that particular time -- time and place. And that
21 requires expert testimony that says, we've got all of these
22 pings.

23 Furthermore, the Government is alleging that they have
24 a cell-phone tower going up and back from the location where the
25 victim -- near where the victim -- resides. When, in fact, all

1 they have is cell-phone tower pings coming from Limerick down
2 into Delaware. They don't have a trip to the Commonwealth of
3 Pennsylvania.

4 THE COURT: Okay.

5 So, why can't you establish that cross?

6 MR. WRAY: I -- I will, your Honor, but I believe it
7 -- to make expert testimony, because the jury is going to make
8 the -- take that leap that this must be evidence --

9 THE COURT: There's --

10 MR. WRAY: -- that that -- the phone was there.

11 THE COURT: -- Third Circuit case law -- you know, I
12 have to follow the Third Circuit case law until they -- they
13 change it. The Third Circuit case law seems to be very clear,
14 this type of evidence has been admitted because --- under Rule
15 701 -- because it is not the subject matter of expert testimony.
16 They're free to call one, but they don't have to.

17 MR. WRAY: I -- I believe, that this testimony is
18 going to require a Dalbert hearing, your Honor. I -- I
19 understand the Court's reasoning and -- and the Court's logic,
20 but I believe that in order to establish that, ping data from a
21 particular cell-phone tower as a cell phone passes it, cell
22 phones have more than twenty -- twenty-square mile radius. You
23 can't sit there and say, if it pings off of this cell-phone
24 tower, it must be right there on top of it within a certain
25 distance.

1 When the reality is, you can get a cell phone call and
2 -- you've made a cell-phone call and you could ping off of data
3 -- a cell-phone tower -- that's twenty -- more than twenty miles
4 away from you.

5 THE COURT: Very well.

6 MR. WRAY: Which would place you far from the crime.

7 THE COURT: Very well.

8 MR. WRAY: And then, when I ask -- when I cross-
9 examine, the first thing you're going to say, well, I don't know
10 any of that data.

11 And I -- I believe, it's going to more prejudicial --
12 probative -- because they're gonna make that leap of faith and I
13 think I've made that point in my argument.

14 THE COURT: Attorney Rotella.

15 MS. ROTELLA: Well, I think he's --

16 THE COURT: You don't have an expert, right?

17 MS. ROTELLA: No, sir, we're -- we're not offering --
18 and -- and the Third Circuit case law -- as your Honor pointed
19 out -- is clear that an expert is not required.

20 We're not asking to have somebody testify as to
21 opinions about pinging off of cell towers. Certainly, counsel
22 is free to ask those types of questions on cross-examination of
23 the lay witness, the agent that is called to testify here.

24 But what he's going to be testifying about is simply,
25 that he took admissible business records from AT&T, put them in

1 a mapping software program, which the Third Circuit cases have
2 noted are commercially available on Google, on MapQuest.

3 You could take the longitude and the latitude of the
4 data that's provided by AT&T, counsel could have done it,
5 himself, put it in his own mapping program and he could come up
6 with the exact information that the witness is going to testify
7 to. He is going to show the summary map, it's admissible as --
8 it's admissible under Federal Rule of Evidence 1006 -- one
9 thousand and six -- he's a summary witness, it's --

10 And the Third Circuit in recent decision, 2011, 2012,
11 2013, have discussed this very point, this exact point that he's
12 objecting to and have found it to be admissible.

13 And, in fact, as I noted in a footnote in my response
14 to his motion, this particular witness has testified three times
15 in the Eastern District of Pennsylvania in --

16 THE COURT: Okay.

17 One time was before me, wasn't it?

18 MS. ROTELLA: Yes, it was. Yes.

19 And so, it's been admissible all three times for this
20 very specific and limited purpose.

21 THE COURT: Right.

22 But on the issue of the reliability of the mapping
23 software, I don't know the technology, but could the mapping
24 software -- in other words, the information he inputs into a
25 software program -- what -- what is the accuracy of that?

1 MS. ROTELLA: Okay. Sir --

2 THE COURT: How has the Court treated that, if you
3 can --

4 MS. ROTELLA: The Courts have treated it by saying,
5 that these mapping software programs are commercially available
6 for anyone, that they are -- are on the Internet. This is a
7 particular one, that the FBI uses. Counsel is free to cross-
8 examine him on it and how -- how frequently that program is
9 updated. The agent is familiar with the information regarding
10 that specific program. But it in no way, involves expert
11 testimony -- in no way.

12 And -- and this Circuit has held that that's proper
13 and admissible.

14 THE COURT: Very well. Okay.

15 MR. WRAY: May I reply briefly, before the Court --

16 THE COURT: Very well.

17 MR. WRAY: -- with this --

18 THE COURT: I -- I will reserve ruling on -- on this
19 issue. I think on other previous occasions, I have allowed a
20 little bit of a -- a mini Dalbert hearing on -- on these issues.
21 I don't know whether I am going to do that or not.

22 MS. ROTELLA: But, sir --

23 THE COURT: I -- I think that -- hold on a minute.

24 MS. ROTELLA: I'm sorry.

25 THE COURT: I think that the Third Circuit case law is

1 -- is pretty clear, that this is admissible under 701, it's not
2 the subject matter of expert testimony. I am going to double
3 check the case law, since you just filed this -- this
4 information. And I will give you my ruling.

5 I don't think you need this before we begin openings,
6 right?

7 MR. WRAY: No, your Honor.

8 THE COURT: Do you?

9 MS. ROTELLA: No, sir.

10 THE COURT: All right.

11 So, we don't know how long we're going to get today,
12 right?

13 MR. WRAY: I -- I have -- I have not picked a jury in
14 federal court in some years, your Honor, so --

15 THE COURT: Well, we have sixty-five.

16 Please no food, no coffee. Follow my standard
17 operating procedures, I urge you to read them and make sure that
18 everybody, who is on -- on your -- in support of your client
19 adheres to them.

20 So, we'll start as soon as the panel is ready. I
21 think the panel is ready, Paul?

22 MR. LOMBARDI: Yes, we're pulling from the courtroom,
23 is that --

24 THE COURT: Right.

25 MS. ROTELLA: Sir --

1 MR. LOMBARDI: So, we would have to set everything up
2 and pull from the courtroom.

3 THE COURT: Right.

4 So, why don't you come and set it up?

5 MR. WRAY: Your Honor, potential witnesses do need to
6 sit outside, correct?

7 THE COURT: Absolutely, for both sides.

8 MR. WRAY: Bobby, you're going to need to sit outside.

9 THE COURT: So, anybody who is going to be testifying,
10 could --

11 MR. WRAY: Bobby, you need to sit outside, 'cause I
12 need to talk to him about -- all right.

13 MS. ROTELLA: Sir, for the record, I have --

14 THE COURT: No, we could do it in the open courtroom.

15 (Discussion held off the record.)

16 THE COURT: Oh, okay. They don't know.

17 MS. ROTELLA: I -- in terms of sequestration, your
18 Honor --

19 THE COURT: We -- excuse me.

20 We have an attorney courtroom outside that they could
21 stay.

22 MR. WRAY: Briefly, can someone who said that to him
23 or may I briefly, show it to him, where the room is, so he can
24 be comfortable?

25 A VOICE: All right, absolutely.

1 MR. WRAY: Thank you very much, young man.

2 THE COURT: Okay. Could you set up?

3 Paul, may I see you?

4 (Discussion held off the record at 9:53 a.m.)

5 THE COURT: Go ahead.

6 MS. ROTELLA: Your Honor, there is one additional
7 issue, we could address.

8 THE COURT: Okay. Did I miss something?

9 MS. ROTELLA: Well, I don't know that you missed
10 something, because I was just advised last night, I received a
11 notice at ten o'clock Sunday night, the night before the trial
12 is to begin, that counsel intends to now call, a mystery expert
13 witness. He provided me with his resume last night. But I have
14 never received a report.

15 Clearly, his time for advising the opposing party,
16 that he intends to call an expert witness, who may or may not
17 change the course of preparation of the Government's witnesses
18 and the presentation of its trial, I -- I would move to prohibit
19 the witness altogether, your Honor, number one.

20 And then, I'm happy to address -- and I have no idea
21 -- he -- he gave a -- a blanket statement, that he may testify
22 in relation to the cell site information. And to some of the
23 Jack'd cell-phone application evidence that may come in.

24 But I -- I've received nothing else.

25 MR. WRAY: Your Honor, he's going to be testifying

1 solely to the Jack'd cell-phone application.

2 THE COURT: Well, who is the witness?

3 MR. WRAY: His name is Robert Wentz (ph), your Honor.

4 THE COURT: Do you have a report?

5 MR. WRAY: I just hired him on late Friday, early
6 Saturday morning to --

7 THE COURT: So, the answer is, no, he's doesn't have a
8 report?

9 MR. WRAY: Not as of yet, your Honor. I just hired
10 him when I --

11 THE COURT: All right.

12 MR. WRAY: -- realized what we were going to bring in,
13 regarding cell-phone data. I realized, we were going to have
14 all kinds of information being given to a jury -- a jury --
15 where they were going to, suddenly, be without an explanation as
16 to what is and is not possible.

17 MS. ROTELLA: Sir --

18 MR. WRAY: Ah, he will have a report done promptly
19 before tomorrow morning.

20 But your Honor, the Government told me at the last
21 moment, that they didn't -- weren't going to bring -- expert
22 witnesses to bring in any cell-phone data and that is the only
23 connection --

24 THE COURT: It's your job to understand the law as to
25 whether or not, if what they intended to present, is admissible

1 or -- or not.

2 MR. WRAY: Furthermore --

3 MS. ROTELLA: And --

4 MR. WRAY: -- furthermore, your Honor, if I may
5 continue --

6 THE COURT: -- under the -- of the Court and --

7 MR. WRAY: -- furthermore, if I may continue, your
8 Honor, the person, who owns Jack'd.com had assured me, that he
9 would make himself available to explain how his program worked.
10 Ah, you know, in a rather protracted and testy conversation
11 earlier this week, the owner flat out refused to come in to
12 testify and said, if you subpoena me, I'll bring an army of
13 lawyers. And insofar as he lived out of state, he had already
14 assured me, he was going to come in.

15 Jonathan Cruchly (ph) owns a number of websites and a
16 number of mobile applications including Jack'd. He was going to
17 appear in court. And then, he abruptly -- his lawyer -- called
18 me and said, we are absolutely not going to testify.

19 THE COURT: So, who is the witness that you intend to
20 call and what are the opinions --

21 MR. WRAY: Robert West?

22 THE COURT: Hold on a minute.

23 Who is the witness, what is the opinion?

24 MR. WRAY: Robert West is simply going to explain, how
25 -- summarize how Jack'd.com works, pursuant to Rule 1006.

1 THE COURT: Okay. Would --

2 MS. ROTELLA: May -- may I, please just address the
3 Court, so there could be -- because he's made very inaccurate
4 statements on this record?

5 THE COURT: All right. Go ahead.

6 MS. ROTELLA: He's -- he's saying that the testimony
7 is limited to how Jack'd.com works. I want the Court to
8 understand, that he was given discovery in April of 2014. He
9 has known before that, because his client is charged in state
10 court with the exact -- similar -- offenses, so he's known even
11 before April. But he certainly knew the Government's discovery
12 since April of 2014.

13 He certainly knows that the Jack'd cell-phone
14 application since April is how his client -- how the Government
15 is saying -- his client met the victim in this case.

16 I'm speaking.

17 MR. WRAY: Okay.

18 MS. ROTELLA: So, he has had how many months, how many
19 months to come up with this expert that is limiting his
20 testimony to how Jack'd.com works.

21 And it comes, Sunday night -- 10:00 p.m. -- the day
22 before we start trial to tell me that there is an expert, fails
23 to provide me -- according to -- so, he's violated the Rules of
24 Criminal Discovery, anyway, because he's giving me this late
25 notice of an expert -- fails to give me a report.

1 And then, wants to offer to the Court, some summary of
2 what he may testify to for Jack'd.com, it should be prohibited.
3 He had too much time to prepare this witness to testify about
4 this general subject. And he failed to do so and this Court
5 should not permit him to do it, on the eve of trial.

6 MR. WRAY: Your Honor --

7 THE COURT: Very well.

8 MR. WRAY: -- the Government is being a bit
9 disingenuous.

10 THE COURT: Please just -- you know -- you would do a
11 lot better, rather than taking shots at your opponent, you --

12 MR. WRAY: I just --

13 THE COURT: -- speak and -- and --

14 MR. WRAY: -- had a shot taken at me, Judge.

15 THE COURT: -- hold on a minute.

16 MR. WRAY: I'll do what you say, I'm sorry.

17 THE COURT: Listen.

18 MR. WRAY: I'm sorry.

19 THE COURT: All right. Listen first and then, speak.

20 MR. WRAY: I will.

21 THE COURT: And we'll get along, right?

22 MR. WRAY: Yeah.

23 THE COURT: All right.

24 So, you will do better in this courtroom, if you don't
25 take shots at your opponent and you just deal with the argument.

1 And the argument is, that I should preclude this
2 mystery expert witness on the theory that you have violated the
3 rules, have given the name too late and I suspect, that that
4 would be prejudicial to the Government.

5 So, why don't you address that argument, since you've
6 had the discovery since April, 2014. And as of June of 2014, I
7 told you that this case was going to be on the list on September
8 29th of 2014.

9 MR. WRAY: Your Honor, as I said, actually, in my
10 motion regarding the cell-phone tower data, the Government gave
11 me cell-phone tower data, not on June -- July 17th and not a
12 month later, but nearly two months later in a format that I
13 couldn't open.

14 And then, on September 19th, ten days before trial,
15 they gave me an Excel spreadsheet, which was suddenly a readable
16 format.

17 So, the Government has given me plenty of late
18 discovery. Also, we got a packet of approximately, two hundred
19 pages of -- 240 pages -- of documents on September 5th, that
20 were supplemental data that -- in an abundance of caution I'm
21 sure -- was produced on September 5th via the United States
22 Mail, so I got it a few days later.

23 THE COURT: All right.

24 MR. WRAY: So, there has been discovery given late and
25 as it comes in on several occasions here and I'm still trying to

1 put my head around, how AT&T produced data on July 17th and on
2 September 5th, it was sent to me in a zip file, not mailed to me
3 by any means and then come in and sit there and say, all of this
4 is last-minute efforts. I have received discovery at the last
5 minute --

6 THE COURT: All right.

7 MR. WRAY: -- and have to deal with that.

8 Your Honor, I can present -- I believe, I can get the
9 testimony I need from Mr. West, as a lay witness -- my pardon to
10 the Government -- he will not be an expert, he will be a lay
11 witness as to how Jack'd.com -- summarize -- how Jack'd.com op
12 -- runs on a cell phone.

13 THE COURT: Okay.

14 Attorney Rotella, do you wish to -- I want to get to
15 the jury, so I don't want to spend a whole day picking the jury.
16 So do you want -- anything else, you have to add?

17 MS. ROTELLA: No, your Honor.

18 THE COURT: Okay. Very well. Paul --

19 MR. LOMBARDI: Thank you.

20 THE COURT: -- Mr. Lombardi.

21 MR. LOMBARDI: Good morning, my name is Paul Lombardi,
22 I am the Jury Administrator. Can all of you see the juror
23 through windows --

24 MS. ROTELLA: Hm-hmm.

25 MR. LOMBARDI: -- on your monitors?

1 MS. ROTELLA: Yes.

2 MR. WRAY: Yes.

3 MR. LOMBARDI: What I am going to do very briefly is
4 just demonstrate how we go about selecting jury panels in this
5 district.

6 * * *

7 (The *voir dire* of the jury panel is not transcribed at
8 this time from 10:01 a.m. until 11:32 a.m.)

9 * * *

10 (At 2:46 p.m. in open court.)

11 DEPUTY CLERK: When I call your name, take a seat,
12 beginning with the first row in the first seat down at the end.

13 THE COURT: All the way to the end.

14 DEPUTY CLERK: Seat No. 1 will be Mary Sipler.

15 Seat No. 2, Wendy Carpani.

16 THE COURT: Number --

17 DEPUTY CLERK: Seat No. 3, Elaine Fisher.

18 Seat No. 4, David Lourenco.

19 Seat No. 5, Michael Kingcaid.

20 Seat No. 6, Katherine Dymond.

21 And Seat No. 7, we'll start in the second row down at
22 the end. Seat No. 7, Kenneth Baker.

23 Seat No. 8, Tracy Carroll.

24 THE COURT: The second row.

25 DEPUTY CLERK: Seat No. 9, Patrick Turner.

1 Seat No. 10, Tammy Copes.

2 Seat No. 11, Paul Schweitzer.

3 Seat No. 12, Matt Krykew.

4 And No. 13, we'll take the next open seat in the first
5 row, George -- George Keiser.

6 THE COURT: The front row.

7 DEPUTY CLERK: No. 14 will go in the back row.

8 THE COURT: Yes.

9 DEPUTY CLERK: Lynn Heisel.

10 And No. 15, will take the last seat in the first row,
11 Marc Farinas.

12 THE COURT: Front.

13 DEPUTY CLERK: Oh, no --

14 THE COURT: I'm sorry.

15 DEPUTY CLERK: -- you take the back row.

16 THE COURT: You take the back row and he takes -- he
17 takes the front. You are the second alternate. Very well.

18 Members of the jury, at this point, let me thank you
19 for being good enough to agree to participate as members of the
20 trial panel to participate in jury selection. I hope that the
21 experience you've had in my courtroom -- although a very brief
22 one -- was a positive one, allowing you an opportunity to see
23 how we go about selecting criminal juries in the Eastern
24 District of Pennsylvania. And I hope, at least, the next time
25 that they ask you for the judge's name, that you will remember.

1 Again at this point in time, I am going to excuse me
2 and you are directed to go back to the jury lounge for further
3 instructions, regarding your service. So, again, thank you very
4 much for making yourselves available and we will leave the
5 courtroom in an orderly fashion, first row first.

6 And as you leave, give your number to my Deputy, Ms.
7 Wertz, who will collect them. And the members of the jury, pass
8 them to the end and then, forward and she will collect them.

9 So, pass them to Juror No. 1 -- well, it doesn't
10 matter -- Juror No. 1 and Juror No. 7 and Juror No. 7 passed it
11 forward to Juror No. 1.

12 All right, you could put them on there. You don't
13 have to worry about whether they're in order or not. You could
14 move your chairs.

15 (Pause at 2:50 p.m.)

16 THE COURT: Okay. Stacy, do you have -- all right.

17 Members of the jury panel, we're going to take a
18 fifteen-minute break. But remember the instructions that I gave
19 you before the break, you are not to talk to each other about
20 the process of jury selection, any of the questions that were
21 posed to you or your responses. Don't talk about this case or
22 any -- of the issues -- relating to this case at all with each
23 other.

24 And when I come back in fifteen minutes, I am going to
25 give you the preliminary instructions of the Court. And we will

1 see whether we'd have time for the opening statements or not,
2 I'll take to the lawyers to see whether we are ready to begin
3 with the opening statements at that time, depending on time.
4 And I will give you the schedule for the balance of the week.

5 So, we'll take a fifteen-minute break. My Deputy,
6 Nancy -- Stacy Wertz -- Stacy Wertz -- will take you to the jury
7 room and distribute to you, the badges that you have to wear
8 while you are in the courthouse as an indication to people, that
9 you have been selected and that you are serving as a member of
10 the trial jury in this case.

11 So, I will see you in about fifteen minutes. And at
12 that point in time, I will administer the oath -- I'm not going
13 to do it right now -- and we'll get started with the case.
14 Okay. Thank you, you may rise.

15 Front row, first, go -- follow Ms. Wertz and then, the
16 second row.

17 (Jury out for a brief recess at 2:52 p.m.)

18 THE COURT: Okay. I'll talk to -- Counsel, I am going
19 to speak to Juror No. 19, I kept her here, because I wanted to
20 find out, what her excuse was for not serving on this panel and
21 I'll talk to her.

22 I don't know whether you have any idea, whether we'd
23 fine her, put her in jail or scold her or keep her here for the
24 balance of this trial. So, I haven't decided.

25 But in any event, I will do that and then, I will get

1 back here in fifteen minutes.

2 I am going to give them the instructions of the Court,
3 which takes about a half an hour. So, we should be about 3:30,
4 3:35.

5 Let me ask, are you in a position to open today?

6 MS. ROTELLA: Yes, sir.

7 THE COURT: All right.

8 So, we'll do the opening statements. How long is the
9 Government?

10 MS. ROTELLA: About fifteen minutes.

11 THE COURT: The defense?

12 MR. WRAY: Fifteen, twenty minutes, Judge.

13 THE COURT: All right.

14 So, basically, we'll go up to 5:00, I think we could
15 take the balance of the -- of the day. And then, we'll start
16 testimony tomorrow?

17 MS. ROTELLA: Okay.

18 THE COURT: Or do you have a witness here, that you
19 could put on?

20 MS. ROTELLA: I do.

21 THE COURT: It's up to you.

22 MS. ROTELLA: I'm not sure, if -- if we'll finish with
23 him, I don't -- I would rather not leave in the middle of his
24 testimony.

25 THE COURT: So, so, I'm -- I'm okay -- I'm flexible

1 enough to tell you, that we'll do openings and bring the witness
2 back tomorrow.

3 But if you have a witness that you want to put on, let
4 me know and -- and like I said, I will go to five o'clock.

5 MS. ROTELLA: Okay.

6 THE COURT: All right?

7 MS. ROTELLA: Thank you.

8 THE COURT: All right. Thank you very much. I'll
9 leave it --

10 MR. WRAY: Your -- your Honor --

11 THE COURT: Yes -- back in the jury room, yes.

12 MR. WRAY: Your Honor, you asked what my opinion was
13 -- about Mr. -- and you -- unless it's a really good excuse, I
14 would respectfully request the Court to call, Juror 19 and make
15 him sit through this entire trial now.

16 THE COURT: Well, I'll -- I'll --

17 MR. WRAY: You asked our -- you asked, what my opinion
18 was, Judge, and I wanted to give it to you --

19 THE COURT: I --

20 MR. WRAY: -- I don't like --

21 THE COURT: -- I appreciate --

22 MR. WRAY: -- people who evade jury service.

23 THE COURT: -- I appreciate your -- your opinion.

24 We'll find out. I'll let you know what I am going to do. I'm
25 going to speak to her. All right.

1 Let me see you.

2 DEPUTY CLERK: All rise.

3 (Brief recess is held at 2:54 p.m.)

4 (Resumed in open court at 3:14 p.m.)

5 THE COURT: Hold, okay.

6 Attorney Rotella, I am going to hold the panel --
7 could you close the door -- is there anything you need to bring
8 to my attention? We could do it at side bar or we could do it
9 in open court, since the jury is still in the jury room.

10 MS. ROTELLA: Sir, I just -- the argument that we had
11 this morning on that other expert witness, that I was told about
12 last night, which he's now said, is not an expert witness, I --
13 I -- I don't know that we have addressed all of the issues
14 surrounding that. And my concern was, what was going to be
15 mentioned in defendant's opening, regarding that potential
16 witness.

17 THE COURT: All right.

18 Let me ask, did you -- you don't need to get into that
19 in your opening, do you?

20 MR. WRAY: Absolutely not.

21 THE COURT: Very well.

22 So, I am going to instruct them not to get into those
23 areas, specifically, until I've had an opportunity to rule on
24 it. All right? So, you understand that, right?

25 MR. WRAY: Absolutely.

1 THE COURT: Okay.

2 It that acceptable to the Government?

3 MS. ROTELLA: It is, your Honor, thank you.

4 THE COURT: All right. Very well.

5 (Jury in at 3:16 p.m.)

6 THE COURT: Remain standing.

7 DEPUTY CLERK: Please -- please raise your right
8 hands.

9 (Jury Sworn.)

10 THE COURT: Very well. You may be seated.

11 PRELIMINARY INSTRUCTIONS OF THE COURT

12 THE COURT: Members of the jury, good afternoon.

13 THE JURY: Good afternoon, your Honor.

14 THE COURT: Let me tell you a little bit about what
15 your role is going to be during the course of the trial as
16 jurors.

17 Under our system of justice, the role of the jury is
18 to find the facts of the case, based on the evidence that you
19 will be seeing and hearing in this courtroom during the next
20 couple of days, from that evidence that will be presented, it is
21 your job to decide, basically, what happened. And then, take
22 the law that I give you and render judgment in this case.

23 That is, from the evidence that you will see and hear
24 in this courtroom, you will decide what the facts are and apply
25 to those facts, the law that I will give in my final charge

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1 during the instructions and that's how you go about reaching a
2 verdict on the charges that have been brought against the
3 defendant in this case. Whatever your verdict, it must be
4 unanimous, all of you have to agree on it or there will be no
5 verdict.

6 In the jury room, you will discuss this case among
7 yourselves, but ultimately each of you have to make up his or
8 her own mind about the verdict. Therefore, each of you has a
9 responsibility which you cannot avoid and you should do your
10 very best during the course of the trial to fulfill your
11 responsibility.

12 I play no part in finding the facts in this case, that
13 is your job and your job alone. You should not take anything
14 that I might say or do during the course of the trial as
15 indicating to you, what I think of the evidence or about what
16 your verdict should be. My role as the trial judge will be to
17 make whatever legal decisions need to be made during the course
18 of the trial. And later on at the conclusion of the trial,
19 explain to you, the legal principles that will guide you in
20 rendering judgment in this case.

21 You must apply my instructions about the law, each of
22 the instructions will be very important. You must not
23 substitute your own notion or opinion about what the law is or
24 ought to be, you just follow the law as I give it to you whether
25 you agree with it or not. Perform these duties fairly and

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1 impartially, do not allow sympathy, prejudice, fear or public
2 opinion to influence you in any way. You should also not be
3 influenced by any person's race, color, religion, national
4 ancestry, gender, sexual orientation, profession, occupation,
5 celebrity status, economic circumstances or position in life or
6 in the community.

7 And let me discuss with you some basic rules as to how
8 you are to conduct yourself during the course of the trial.

9 First and foremost, your job is to keep an open mind,
10 I think I talked to you a little bit about this earlier. Do not
11 make up your minds about the verdict until you have heard all of
12 the evidence in this case, until I have given you the
13 instructions as to the applicable law at the end of the trial.
14 And until you have had, really, the opportunity to talk to each
15 other with a view of reaching a verdict during your
16 deliberations in this case.

17 Do not discuss the case among yourselves until the end
18 of the trial when you go back into the jury to -- to deliberate
19 on your verdict. So, during the trial, you cannot talk to each
20 other about the evidence or the witnesses or the testimony that
21 you have been hearing.

22 And the reason for that is, again, it is your job to
23 give every fellow juror, an opportunity to keep an open mind, so
24 the only way you could do that is by not talking about the
25 witnesses or the trial as the evidence unfolds, that would be

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1 highly inappropriate. The only time that you could talk to each
2 other about the evidence, about the witnesses, about the law is
3 when the case is over and I send you back to the jury room to
4 begin your deliberations.

5 During the trial, of course, you may talk to your
6 fellow jurors about anything else of a personal nature or of
7 common interests, but not under any circumstances are you to
8 talk to them about the testimony, the witnesses or anything
9 relating to the matters raised during the course of the trial.

10 During the trial, you should not speak to any of the
11 parties, any of the lawyers or any of the witnesses called upon
12 to testify during the course of the trial, not even to pass the
13 time of day. If any lawyer, party or witness does not speak to
14 you, when they see you in the hallway, when they ride with you
15 in the elevator or the like. And be mindful of the fact that I
16 instruct them to avoid any contact with you, whatsoever, so they
17 should not get in the elevator or try to approach you or walk
18 next to you while they are passing you in the hallway, but if
19 that happens, you should avoid any contact with them as well.
20 Remember, it is because they are not supposed to talk to you or
21 visit with you, either, that could create serious problems for
22 this Court.

23 Do not talk with anyone else or listen to others talk
24 about this case until the trial has ended and you have been
25 discharged as the jurors.

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1 I don't control, who comes in -- this is a public
2 building -- a lot of people come in -- in and out -- during the
3 course of the trial, including the press and the media. So, in
4 order to assure the people that we have in front of us a fair
5 trial, it is incumbent upon you not to talk about the case at
6 any time or not to allow anyone to talk about the case in your
7 presence. It is important, not only that you do justice in this
8 case but also that you give the appearance of doing justice.

9 If anyone -- and I mean, anyone -- tries to talk to
10 you about the case during the trial, that would be a serious
11 problem for whoever does that. But you are directed to report
12 it to me through my Courtroom Deputy immediately. And do not
13 discuss it with your other fellow jurors and I will promptly
14 address it, because as you well know, that could create serious
15 problems for all of us.

16 Do not discuss the case with anyone outside of the
17 courtroom or at home, including your family and friends. Of
18 course, you may tell your family members or friends, that you
19 have been selected as a member of the trial jury in a criminal
20 case. And you may even tell them how long the trial is expected
21 to last. But not under any circumstances, should you tell them,
22 that -- anything else. You should tell them, that the Judge
23 instructed you not to talk to them any more about the case and
24 that they should not talk to you about it, either.

25 The reason for this is that, sometimes, someone else's

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1 thoughts can influence your thinking and your thinking should be
2 influenced only by what you learn while we are altogether in the
3 presence of the Court, the Government and the defense and the
4 parties.

5 I told you earlier and I am going to repeat it again,
6 until the trial is over and you have announced your verdict, do
7 not watch or listen to any television or radio news programs or
8 reports about the case or read any news or Internet stories or
9 articles about the case or about anyone involved with it.

10 Do not use -- this is the -- the age of technology and
11 I am going to caution you, that you should not use a computer,
12 cellular phone, other electronic devices or tools of technology,
13 while in the courtroom or during your deliberations. I think we
14 collect them and we keep them in the jury room and we'll
15 distribute them to you during the breaks and at the end of the
16 day. So, make sure that during the breaks, once you come back
17 into the jury room to begin the business of the Court, that they
18 are completely turned off and do not access them.

19 These devices, of course, may be used during breaks or
20 recesses for personal uses, but may not be used to obtain or
21 disclose information about the case to anyone. You may not
22 communicate with anyone about the case on your cell phones
23 through e-mail, Blackberry, iPhone, text messaging or Twitter
24 through any blog or website, through any Internet chat room or
25 by way of any other social-networking websites, including

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1 Google, Facebook, MySpace, Linked-In and YouTube. You may not
2 use any similar technologies via social media, even if it's not
3 on the list of technology that I just indicated, this could
4 create serious problems with the Court.

5 Also, do not conduct any independent research of your
6 own about any of the matters relating to this case or this type
7 of case. And what this really means is, for example, that you
8 must not visit the scene, conduct an experiment of your own,
9 consult any reference works or dictionaries or search the
10 Internet, website or blogs for additional information or use a
11 computer, cellular phone or other electronic devices or tools of
12 technology or any other method to obtain information about this
13 case or about this type of case, the parties in this case or
14 anyone involved with this case.

15 Please do not try to find out information about this
16 case from any source outside the confines of this courtroom.
17 You must decide -- I'm going to repeat it -- the only evidence,
18 you really need to decide this case, is the evidence that you
19 will be seeing and hearing in this courtroom from the witnesses,
20 who are subject to examination on both direct and cross-
21 examination, any documents or exhibits or evidence that is
22 presented and admitted in court. And that is all you need, you
23 should not supplement your knowledge about this case from any
24 other source, because that would be highly inappropriate, since
25 as you could see, the parties would not have an opportunity to

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1 challenge it or to subject it to the test of cross-examination.

2 And finally, you should not concern yourself with or
3 consider the possible punishment that might be imposed, if you
4 return a verdict of guilty. Your job is to decide whether or
5 not on the charges that the Government has brought against the
6 defendant, the Government's evidence proves the charges beyond a
7 reasonable doubt, that is your job. So, do not concern
8 yourselves with anything else as to what a potential punishment
9 may be.

10 During the course of the trial, it may be necessary
11 for me to talk to the lawyer outside of your hearing. I think
12 you already saw that a little bit during the course of the -- of
13 the jury selection, where I called jurors to give me responses
14 in private out of the presence of the jury. This is what we
15 call, side-bar conferences. If that happens, please be patient.

16 We'd also ask that you advise me through my Deputy, if
17 you are able to hear any of the conversations that I am having
18 at side bar with the lawyers, because the very purpose of those
19 conversations, is to hold these conversations outside of your
20 hearing for proper and important reasons. Sometimes, I'm trying
21 to understand more fully and more completely, the issues that
22 are raised by the lawyers through objections and responses to
23 objections, that I have not had the opportunity to hear before.
24 And in order to do that, I may have to have those conversations.
25 So, if you are listening in and we usually try to turn on the

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1 white noise in the computer system, but if you hear anything,
2 raise your hand and let me know. So, that my Deputy could take
3 appropriate steps to make sure that we keep those discussions
4 strictly confidential.

5 We are not trying to keep information from you, these
6 conferences, as I just said, are necessary for me to discuss
7 with the lawyers objections to evidence and -- and to, really,
8 make sure that legally relevant and sufficient in -- evidence is
9 admitted in evidence for your consideration in deciding whether
10 or not, the Government has proven the charges beyond a
11 reasonable doubt.

12 I will, of course, do my very best to keep the number
13 and the length of these conferences to a minimum. However, if I
14 think that the conference will be long, usually, I will call
15 recess and tell you, that I'm in recess for ten or fifteen
16 minutes while I'll deal with the issue. And if I need a longer
17 period of time, at least, my Deputy will instruct you, that the
18 Judge needs a little bit more additional time. I'm not applying
19 for an extension of time from you -- from you -- for approval,
20 I'm just keeping you informed.

21 I may not always grant a lawyer's request for a
22 continuance or a conference, because sometimes, I -- I think
23 that it may not be necessary. But I'd ask that you do not
24 consider my granting or denying a request for a conference by
25 any one of the lawyers as suggesting to you, my opinion of the

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1 case or what your verdict should be.

2 You will find that in federal court, note taking is
3 permitted. And at the end of the trial, please understand that
4 you must make your decision based upon what you remember from
5 what the witness told you or the evidence that was presented.
6 And you will not have a written transcript of the testimony to
7 review. So, you have to pay close attention as the witnesses
8 are testifying from the witness stand.

9 If you wish, you may take notes to help you remember
10 what the witness tells us. My Courtroom Deputy will make
11 arrangements at some point in time today -- I don't know if you
12 already have them with you but if you already have them and you
13 have a pen -- so that you could take notes during the course of
14 the trial. At the end of the day, we will collect the pens and
15 the notepads and we will distribute them to you, again, in the
16 morning. Under no circumstances are you to remove your -- your
17 notepads and your pens from the courtroom -- your notepads,
18 primarily from the -- from the courtroom or from the jury room.

19 Let me just give you some specific points that I'd ask
20 that you keep in mind, if you do decide to take notes about note
21 taking:

22 One, we permit you to take notes in the federal court,
23 but you are not required to take notes. You are not required to
24 take them and how many notes you want to take, if any, is
25 entirely up to you. Please make sure that note taking does not

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1 distract you from your job as jurors. And often, in order for
2 you to make a determination as to whether a witness is being
3 truthful and candid with you, you have to pay close attention to
4 the witness's testimony or how the witness is testifying. So,
5 you have to listen to all of the testimony of each witness. And
6 you also need to decide whether and how much to believe each
7 witness.

8 That will require you to watch the witness as the
9 witness appears from the witness stand, how the witness behaves,
10 how the witness and the manner in which the witness testified
11 while he or she is testifying. So, how and the manner of the
12 testimony is as important as what the witness has said.

13 You cannot write down everything that is said and
14 there is always the fear that a juror will focus so much
15 attention on note taking, that he or she will miss the
16 opportunity to make these important observations. Remember that
17 note taking is just to help you remember the evidence, your note
18 are memory aids, the are not evidence. Notes are not a record
19 or a written transcript of the trial. Whether or not you take
20 notes, you will really need to rely on your own memory of what
21 the witnesses tell you from the witness stand on direct and
22 cross-examination. Notes are only to assist your memory and you
23 should not be overly influenced by notes.

24 In your deliberations, do not give any more or less
25 weight to the views of a fellow juror, just because that juror

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1 did or did not take notes. Do not assume that just because some
2 -- something is in someone's notes -- that it necessarily took
3 place in court. It is just as easy to write something down
4 incorrectly as it is to hear it or remember it incorrectly.
5 Note are not entitled to any greater weight than each juror's
6 independent memory of the evidence.

7 And you should rely on your own individual and
8 collective memories when you begin your deliberations in this
9 case and reach your verdict. You should not take your notes
10 away from court under any circumstances, Ms. Wertz will collect
11 them and she is responsible for making sure that no one looks at
12 your notes. And immediately after we have finished your
13 deliberations and this case is over and I have accepted your
14 verdict, Ms. Wertz will collect and destroy your notes to
15 protect the secrecy of your deliberations.

16 Members of the jury panel, during the course of the
17 trial in federal court and, at least, in this courtroom, you
18 will note that only the lawyers and I are allowed to ask
19 questions. You will not be permitted to ask questions of the
20 witnesses.

21 If, however, you are unable to hear or -- a witness or
22 a lawyer -- just because of the manner in which they speak or
23 just because there is something else happening in the courtroom,
24 someone walked in and bang -- the door was not shut behind them
25 or they distracted you momentarily, at that point in time, just

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1 raise your hand and let me know that you missed the testimony
2 and we could have the witness repeat it for your benefit. So,
3 members of the jury, just remember that.

4 Let me just give you sort of a bird's eye view of what
5 is about to happen.

6 Every trial is composed of a number of different
7 stages and the first stage of the trial will be for the lawyers
8 to give you an opening statement. The Assistant United States
9 Attorney in this case, Ms. Rotella may make an opening statement
10 at the beginning of her case. And immediately, thereafter,
11 defense counsel, Mr. Wray may make an opening statement after
12 she has made her opening statement. Or they may postpone to
13 making an opening statement until after the Government finishes
14 its evidence. A defendant is not required to make an opening
15 statement, so we will wait and see whether they make an opening
16 statement immediately after the Assistant United States
17 Attorney, Michelle Rotella makes her opening statement.

18 But the purpose of an opening statement, simply, is to
19 give you sort of an outline to help you understand what each
20 party expects the evidence to show at the conclusion of the
21 trial. And what is said in an opening statement is not
22 evidence, itself, only what they expect the evidence will show
23 to you at the conclusion of the trial.

24 After you hear the opening statements and it looks
25 like you're going to be able to hear the opening statements

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1 today after I'm done and that's possibly, all we're going to do
2 today, we probably will begin the testimony tomorrow.

3 But after you hear the opening statements, then the
4 Government will begin to present evidence or introduce evidence
5 that it thinks it proves the charges stated in the indictment
6 against the defendant.

7 And the Government will present witnesses and then,
8 conduct what we call, direct examination of the Government
9 witnesses and the defendant, of course, may cross-examine those
10 witness and the Government may also offer exhibits and documents
11 into evidence.

12 The purpose of cross-examination is to pose questions
13 to the witness, so that you, the jury, are in a position to tell
14 whether or not to believe the witness. And also, to consider
15 evidence that was not brought out on direct examination in
16 weighing the evidence in this case.

17 After the Government has presented its case -- its
18 witnesses, its evidence -- the defendant may present evidence,
19 but the defendant is not required to do so. And I will tell you
20 this many, many times during the course of the trial, that the
21 Government always has the burden or obligation to prove each and
22 every element of the offenses charged beyond a reasonable doubt.

23 The defendant is presumed to be innocent of the
24 charges brought against him, the law never imposes on a
25 defendant in a criminal case, the burden of proving his

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1 innocence by calling any witnesses, producing any exhibits or
2 introducing any evidence. The burden of proof rests on the
3 Government and that burden is to prove the charges beyond a
4 reasonable doubt.

5 After all of the evidence has been presented, the
6 lawyers will have the opportunity to give you a closing
7 argument. And the closing arguments are designed to present to
8 you, the parties' theories our what the evidence has shown or
9 not shown and what conclusions may be drawn from the evidence.

10 Again, what is said in a closing argument just like
11 what is said in an opening argument is not evidence in this
12 case.

13 After you hear the closing arguments, I will then give
14 you the final instructions concerning the applicable law that
15 you just apply to the evidence presented during the course of
16 the trial as I am doing now. And I may also give you
17 instructions on some aspects of the law throughout the trial as
18 well as at the end of the trial.

19 After my final instructions on the law -- one point --
20 any instructions that I give you during the trial and in my
21 final charge, the important thing for you to consider is that
22 all of them taken together will constitute the law that you must
23 follow and apply to the facts in this case as you find them.

24 After my final instructions on the law, you will then
25 retire to the jury room to begin consideration of your verdict

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1 and your deliberations are secret, you will not be required to
2 explain your verdict to anyone. And your verdict must be
3 unanimous, that means that all of you must agree or there will
4 be no verdict. You must keep your minds open during the trial,
5 do not make up your mind about any of the questions in this case
6 until you have had the opportunity to hear each piece of
7 evidence and all of the law, which you must apply to the
8 evidence. In other words, until you begin your deliberations in
9 the jury room.

10 Let me give you some guidelines as to what is and what
11 is not evidence and in a few minutes then, you will be in a
12 position to hear the arguments -- the opening statements -- of
13 the lawyers.

14 Remember, I said, you must make your decision in this
15 case, solely on the evidence that you see and hear in this
16 courtroom. Do not let any rumors, suspicions or anything else
17 that you may see or hear outside of the courtroom influence your
18 decision in any way.

19 The evidence from which you could find the facts will
20 consist of, one, the testimony of the witnesses, who will be
21 testifying from that witness stand under oath before you.

22 Any documents or other things that are received as
23 exhibits in evidence and I admit them and you've had an
24 opportunity to see them and consider them or any fact or
25 testimony that the lawyers stipulate to, that is, that they

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1 formally agree that it could be admitted as a proven fact to
2 which there is no contradiction or inference -- contrary
3 inference. So, that's the source of where -- the sources -- of
4 the evidence from which you could establish what happened in the
5 case.

6 I've already told you, that the opening statements and
7 the closing statements of the lawyers is not evidence. And
8 questions by the lawyers and questions that I might ask it's not
9 evidence. You must not assume that a fact is true, merely,
10 because one of the lawyers or I posed the question about it. It
11 is the witness's answers that are -- or constitute the evidence.
12 Of course, you may need to consider the question to know what
13 the witness means by his or her answer. For example, if a
14 witness says, yes to a question, without the question, you don't
15 know what the witness is saying, yes to. So, you would have to
16 consider the question to understand what the witness is,
17 basically, saying.

18 Objections by the lawyers, including objections in
19 which the lawyers state facts or make speeches -- which I do not
20 like or tolerate -- is not evidence. Any testimony that I
21 strike or tell you to disregard is not evidence. And anything
22 that you may see or hear about this case, outside of the
23 courtroom is not evidence that you could consider in reaching a
24 verdict in this case, that would be highly inappropriate.

25 You should use your common sense in weighing the

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1 evidence, consider it in the light of your everyday experience
2 with people and events and give it whatever weight, you believe
3 the evidence deserves to receive. If your experience and common
4 sense tells you, that certain evidence, reasonably, leads to a
5 conclusion, you are free to reach the conclusion.

6 Members of the jury, you will see during the course of
7 the trial, that the -- the rules of evidence will control what
8 could be received in evidence. So, when a lawyer asks a
9 question or offers a piece of evidence or an exhibit -- what we
10 call an exhibit -- into evidence and the other lawyer thinks
11 that that is not permitted under the Federal Rules of Evidence,
12 that lawyer may object.

13 When a lawyer objects, I usually, politely will turn
14 to the lawyer and ask to state grounds and I usually want to
15 hear, just one or two words, that cue me in to what is the basis
16 of the legal objection. Sometimes, they might refer to a
17 number, 8031 or 8032 or 401 or 402, the numbers mean nothing to
18 you, but they mean something to me, they'll cue me as to what is
19 the basis of the legal objection. That simply means, that the
20 lawyer is asking me to decide whether the evidence should be
21 allowed under the Federal Rules of Evidence.

22 I'll tell you that a lawyer has the responsibility to
23 their client to make objections when they think that the
24 evidence being offered is being offered -- is improper under the
25 Federal Rules of Evidence and you should not be influenced by

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1 the fact that an objection was made nor should you keep a
2 scorecard as to the battle of the objection or who is winning
3 it.

4 You should also not be influenced by my rulings on
5 objections to evidence. If I overrule an objection, the
6 question may be answered or the exhibit may be received as
7 evidence and you should treat it -- that testimony or exhibit --
8 like any other.

9 Of course, I may allow evidence, testimony or exhibits
10 only for a limited purpose, if I do that, I generally, will give
11 you a particular instruction as to for what purpose you should
12 consider that evidence, if I am asking to give a limiting
13 instruction on a particular piece of evidence or testimony.

14 Now, here is how it works, the lawyer makes an
15 objection, I will ask the lawyer to state the grounds. The
16 other lawyer will respond. And then, quickly, I will make a
17 ruling. My ruling may be, I sustain the objection or I overrule
18 the objection or I may sustain it and ask the lawyer to
19 rephrase.

20 If I sustain an objection, the question will not be
21 answered or the exhibits will not be received as evidence.
22 Whenever, I sustain an objection, you must disregard the
23 question or the exhibit entirely. Do not think about or guess
24 what the witness might have said in answer to the question. Do
25 not think about or guess what the exhibit might have shown.

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1 And remember that, sometimes, a witness may have
2 already answered before a lawyer objects or before I rule on the
3 objection, if that happens and if I sustain the objection, you
4 should disregard the answer that was -- that was given.
5 Although, usually, I will strike the answer and direct that you
6 disregard it, but if I don't do that, remember, that you are to
7 disregard the answer that was given in response to an objection,
8 that I sustained during the course of the trial.

9 Also, I may order that some testimony or other
10 evidence be stricken or removed from the record and if I do
11 that, I will instruct you to disregard evidence, that means that
12 when you go back to the jury room to decide your verdict, you
13 must not consider that piece of evidence or be influenced in any
14 way by the testimony or other exhibit or other evidence that I
15 told you to disregard.

16 Members of the jury, although the lawyers may call to
17 your attention to certain facts or factual conclusions that they
18 think are important, what the lawyers say is not evidence and it
19 is not binding upon you. It is your own recollection and
20 interpretation of the evidence that controls your decision in
21 this case.

22 Also, do not assume from anything that I've done or
23 said during the course of the trial, that I have any opinion
24 about the evidence or about what the issue is in this case or --
25 or about what your verdict in this case should be.

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1 Every case -- there are two types of evidence that are
2 presented -- in every case, there's direct evidence that an
3 event happened or something happened. And there is
4 circumstantial evidence from which you could infer the existence
5 of other facts at issue.

6 So, you may use both types of evidence in reaching
7 your verdict, direct evidence simply means evidence which if you
8 accept as credible, directly proves a fact at issue.

9 An example of direct evidence, of course, is when a
10 witness testifies about something the witness knows from his or
11 her own senses, something that the witness has seen, touched,
12 heard, smelled, tasted, that would give you direct evidence.

13 While circumstantial evidence, on the other hand, is
14 evidence which if accepted -- accepted by you -- as credible,
15 indirectly proves a fact at issue. It is evidence that proves
16 one or more facts from which you, the jury, could find or infer
17 the existence of some other fact or facts at issue.

18 An inference is simply, a deduction or a conclusion
19 that reason, experience and common sense leads you to make from
20 the evidence presented. An inference is not a suspicion or a
21 guess or a surmise, it is a reasoned, logical decision to find
22 that a disputed fact exists on the basis of another fact that is
23 proven.

24 So, let me give you an example. Someone walked into
25 this courtroom right now wearing a raincoat and carrying a wet

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1 umbrella, that would be circumstantial evidence or indirect
2 evidence from which you find or conclude that it was raining
3 outside. You would not have to find that it was raining, but
4 you could find on the basis of those proven facts, that it was
5 raining outside.

6 Sometimes, different inferences may be drawn from the
7 same set of circumstances. The Government on the one hand, may
8 ask you to draw one inference and the defense may ask you to
9 draw another inference. It is up to you and you alone to decide
10 what inferences you will draw based on all of the evidence
11 presented. And you should consider all of the evidence that is
12 presented in the trial whether direct or circumstantial. The
13 law, really, makes no distinction between the weight, that you
14 should give, either, direct or circumstantial evidence. It's
15 for you to decide how much weight to give any of the evidence
16 whether direct or circumstantial.

17 Members of the jury, we've talked a little bit about
18 your job as jurors and one of your main jobs will be to size up
19 the witnesses as they testify from the witness stand and decide
20 whether or not to -- whether or not to believe all, none or part
21 of what a witness is telling you.

22 So, in deciding what the facts are, you have to decide
23 what the testimony of the witnesses you believe and what
24 testimony you do not believe, because you are the sole judges of
25 the credibility of the witnesses.

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1 By credibility, we mean, whether the witness is worthy
2 of your belief? Is the witness, who is being called to testify
3 being truthful? Is the witness accurate? Remember that you are
4 free to believe everything a witness tells you or only part of
5 what a witness tells you or none of it.

6 You may also decide whether to believe a witness based
7 on his or her own behavior or manner while testifying. The
8 explanation that the witness gives you during the course of the
9 trial and any other -- and all the other evidence -- in this
10 case, just as you would in any important matter, where you are
11 deciding whether a person, who is before you is being truthful,
12 straightforward and accurate in his or her recollection.

13 The decision or the question of credibility refers --
14 in deciding questions of credibility -- remember to use your
15 good common sense and good judgment and your experience as you
16 have lived life.

17 Take a look at a number of factors, such as, the
18 opportunity and ability, the witness had to see or hear about
19 the things about which the witness testified from the witness
20 stand. The quality of the witness's knowledge, understanding
21 and memory. How the witness appeared, behaved, while
22 testifying? Whether the witness has any interest in the outcome
23 of the case or any motive, bias or prejudice? Any relation the
24 witness may have with a party in the case? And any effect that
25 the verdict may have on the witness?

1 Whether the witness said or wrote anything before the
2 trial, that is different from the witness's testimony here in
3 open court. Whether the witness's testimony is consistent with
4 or inconsistent with other evidence that you believe and find
5 credible. And any other factors that bear upon whether the
6 witness should be believed by you.

7 Now, members of the jury, remember that
8 inconsistencies and even, discrepancies, in a witness's
9 testimony or between the testimony of different witnesses may or
10 may not cause you to disbelieve that witness's testimony. Two
11 or more people witnessing an event may simply see it or hear it
12 happen differently. Mistake in recollection, like, failure to
13 recollect is a common human experience.

14 In weighing the effect of an inconsistency, you should
15 consider whether it is about a matter of importance or an
16 insignificant detail. And you should also consider whether the
17 inconsistency is an innocent one or an intentional one. You are
18 not required to accept the testimony of a witness, even if that
19 witness's testimony is not contradicted and the witness is not
20 impeached. You may decide that the testimony is not worthy of
21 your belief, because of the witness's bearing and demeanor or
22 because of the inherent improbability of the testimony or for
23 other reasons that are sufficient to you as members of the trial
24 jury.

25 After you make up your own judgment about whether to

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1 believe the witness, then you can attach to that witness's
2 testimony, the significance -- the weight, the importance --
3 that you think that witness's testimony deserves to receive.

4 Remember, that the weight of the evidence to prove a
5 fact does not, necessarily, depend on the number of witnesses
6 who testify. The reason test of the -- the real important
7 thing, is more than numbers, it's how credible the witness's
8 testimony is or are and how much weight you think their
9 testimony deserves to receive.

10 Members of the jury, the Government in this case
11 charges the defendant, Christopher Steele, with violating
12 federal law, specifically, using an interstate commerce
13 facility, the Internet to entice a minor to engage in sexual
14 conduct.

15 Two, interstate travel with the intent to engage in
16 illicit sexual conduct with a minor.

17 And three, using an interstate commerce facility --
18 the Internet -- to receive child pornography.

19 The charges against Christopher Steele are contained
20 in what we call, an indictment. An indictment is simply the
21 formal way of specifying the exact crimes the defendant is
22 accused of committing. An indictment is an accusation only, it
23 is a description of the charges against the defendant. An
24 indictment is not evidence of anything. And you should give no
25 weight or any weight to the fact that Mr. Christopher Steele has

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1 been indicted in making your decision in this case.

2 The defendant, Christopher Steele is charged in the
3 indictment with committing the offenses of using an interstate
4 commerce facility, interstate travel with the intent to engage
5 in illicit sexual conduct with a minor and using an interstate
6 commerce facility, the Internet, to receive child pornography.

7 To help you follow the evidence, I will give you a
8 brief summary of the elements of the offense, each of which the
9 Government must prove beyond a reasonable doubt in order to
10 convict Mr. Christopher Steele of the offenses charged. And I
11 will give you further instructions at the conclusion of the
12 trial, that will be more -- more details.

13 But suffice to say, so that you could understand,
14 what's about to happen, that Count 1 of the indictment charges
15 Steele with interstate commerce -- specific -- with using an
16 interstate commerce facility, the Internet, to entice a minor to
17 engage in sexual conduct. The elements of this offense are:

18 That the defendant did knowingly use a facility and
19 means of interstate and foreign commerce, that is, the Internet.

20 That while -- two -- that while doing so, he knowingly
21 persuaded, induced, enticed or coerced a child under the age of
22 eighteen.

23 Three, to engage in sexual activity.

24 And fourth, for which any person could be charged with
25 a criminal offense.

1 Count 2 of the indictment charges Christopher Steele
2 with interstate travel, with in -- with intent to engage in
3 illicit sexual conduct. The elements of this offense are:

4 First, that the defendant crossed state lines with the
5 intent to engage in a sexual act with a minor.

6 Two, that the minor had reached the age of twelve
7 years, but had not yet reached the age of sixteen years.

8 And three, that the minor was, at least, four years
9 younger than the defendant.

10 And Count 3 of the indictment charge Christopher
11 Steele with receipt of child pornography. The elements of that
12 offense, briefly, are:

13 One, that the defendant used any means or facility of
14 interstate or foreign commerce, that is, the Internet, in and
15 affecting interstate or foreign commerce.

16 Two, that he did so knowingly, received materials that
17 the defendant knew contained visual depictions of a minor
18 engaged in sexual-explicit conduct.

19 And four -- and three, that the producing of that
20 visual depiction involved the use of a minor engaged in
21 sexually-explicit conduct.

22 What I have just told you is only a preliminary out --
23 a preliminary outline -- of the elements of the offenses
24 charged.

25 At the end of the trial, I will give you final

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1 instructions on the elements of the offenses charged and all the
2 matters of law, those final instructions will be more detailed,
3 they will guide you reaching your verdict in this case.

4 Mr. Steele is -- has pleaded not guilty to the offense
5 charged in the indictment. Mr. Christopher Steele is presumed
6 to be innocent. He starts the trial with a clean slate with no
7 evidence against him. The presumption of innocence stays with
8 Mr. Christopher Steele unless and until the Government presents
9 evidence that overcomes that presumption by convincing you, the
10 jury, that Ms. Christopher Steele is guilty of the offenses
11 charged beyond a reasonable doubt.

12 The presumption of innocence, members of the jury,
13 requires that you find Mr. Christopher Steele not guilty unless
14 you are satisfied that the Government has proved guilt beyond a
15 reasonable doubt.

16 The presumption of innocence means that Mr.
17 Christopher Steele has no burden or obligation to present any
18 evidence at all or to prove that he is not guilty. The burden
19 or obligation of proof is on the Government to prove Mr.
20 Christopher Steele is guilty and this burden stays with the
21 Government throughout the entire trial.

22 In order for you to find Christopher Steele guilty of
23 the offenses charged, the Government must convince you that Mr.
24 Christopher Steele is guilty beyond a reasonable doubt. That
25 means that the Government must prove each and every element of

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1 the offenses charged beyond a reasonable doubt. A defendant may
2 not be convicted based on suspicion, conjecture or surmise, but
3 only on evidence proving guilt beyond a reasonable doubt.

4 Proof beyond a reasonable doubt does not mean proof
5 beyond all possible doubt or to a mathematical certainty.
6 Possibly doubts are doubts based on conjecture or speculation or
7 surmise are not reasonable doubts.

8 The law defines a reasonable doubt as follows:

9 A reasonable doubt is a fair doubt based on reason,
10 logic, common sense or experience. A reasonable doubt means, a
11 doubt that that would cause an ordinary reasonable person to
12 hesitate to act in a matter or matters of importance of his or
13 her own life.

14 It may arise from the evidence that was presented or
15 the lack of evidence or the nature of the evidence presented.
16 If after considering all of the evidence, you are convinced that
17 the Government has proved Christopher Steele guilty beyond a
18 reasonable doubt, you should return a verdict of guilty.
19 However, if you have a reasonable doubt as to an element of an
20 offense, then you must return a verdict of not guilty.

21 Members of the jury, one last instruction before I
22 call upon the openings.

23 Christopher Steele is charged with three separate
24 offenses, each offense is charged in a separate count -- in a
25 separate count -- of the indictment. The number of offenses

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1 charged is not evidence of guilt and this should not influence
2 your decision in any way.

3 You must separately consider the evidence that relates
4 to each offense and you must return a separate verdict for each
5 offense, for each offense charged, you just decide whether the
6 Government has proved beyond a reasonable doubt that the
7 defendant is guilty of that particular offense. Your decision
8 on one offense whether guilty or not guilty, should not
9 influence your decision on any other offenses charged, each
10 offense should be considered separately by you.

11 It is four o'clock, members of the jury and my
12 understanding is that the openings will be, probably, between
13 fifteen to twenty minutes per side, so we have enough time to
14 listen to the opening statements. And then, tomorrow, we will
15 begin with the testimony.

16 Let me give you sort of my -- my schedule and tomorrow
17 it's a little bit different and I will tell you why.

18 My schedule generally, we begin court promptly --
19 promptly -- at 9:00 a.m., so at 9:00 a.m, I want you to be
20 seated right in the jury box, so that we could begin with the
21 testimony and we'll have the first witness all ready on the
22 witness stand waiting for you. And the witness will be sworn in
23 front of you and we will get started with the case.

24 The lawyers understand that once I get started, I
25 usually take testimony from 9:00 to 11:00 and I will take a

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1 break at 11:00 for about fifteen minutes. And thereafter,
2 generally, I break at 11:00 to 11:15 and then, I will resume
3 till 12:30. We break for one hour for lunch. I'm not going to
4 be as generous as I was today, just one hour. We resume at
5 1:30. We generally go to five o'clock. We take a break at 3:00
6 p.m. for about fifteen minutes, so that we could keep the trial
7 moving.

8 So, we put in a lot of time and the lawyers are aware
9 of that and they will have witnesses ready for you, so that you
10 do not waste your time.

11 Tomorrow is a little bit of an exception, because I
12 may be called upon to -- between 11:00 and 11:30, I don't know
13 exactly, when -- but between 11:00 and 11:30, you will see
14 somebody give me a nod, because I have to go to a pretty
15 important meeting with some of my colleagues and we have people
16 from Washington, D.C., that are here on very important business
17 and they need to talk to a few of our federal judges, including
18 me. So, I will be with my other colleagues at a meeting and we
19 don't know exactly, when they're going to get here.

20 So, I will probably go to 11:00 or 11:00 -- passed
21 11:00 until they call me and then, we'll take a break. The
22 break may be for fifteen minutes, it may be for a little longer.
23 My staff will keep your posted. So, tomorrow is a little
24 different and we will sort of keep you posted.

25 That's pretty much the schedule and we anticipate that

1 you will have the case before Friday, I keep saying that, but
2 I'm pretty comfortable that you will probably have all of the
3 testimony in, no later than, either, probably Wednesday morning
4 or Wednesday afternoon and we're in a position to close, either,
5 Thursday or earlier than that. So, I might be wrong, but I'm
6 not in doubt. So, you will be done with the case by Friday.

7 With that, I am going to call upon the Government to
8 give you the opening statement, the Assistant United States
9 Attorney, Michelle Rotella.

10 MS. ROTELLA: Thank you, your Honor.

11 THE COURT: You're welcome.

12 GOVERNMENT'S OPENING STATEMENT

13 MS. ROTELLA: Ladies and gentlemen, there is a --
14 there is a fear that is shared by virtually every parent of a
15 teenaged child that, because almost every teenager has a cell
16 phone, an iPad or a laptop computer and the fear that every
17 parent has is that, their child is going to come across somebody
18 on the Internet, an adult, who is looking to take advantage of a
19 teenager.

20 Well, you will hear, that in this case, for the
21 parents of the fourteen-year-old boy, who was victimized, their
22 fear became their reality, when he met this defendant,
23 Christopher Steele over the Internet.

24 It would appear that the case stretches back to around
25 the spring of 2013, a little over a year ago. And you will

1 hear, that the fourteen-year-old boy in this case, realized at
2 that point -- he had just turned fourteen -- and he realized
3 that he was gay. You'll hear, he came out this year and they
4 were supportive of him.

5 But you'll also hear that at fourteen, though his
6 parents supported him and he could talk to them, he still felt
7 very alone. And so, he did what many teenagers do today, he
8 turned to the Internet to see if he could find somebody that he
9 could make contact with, somebody who was like him.

10 And what you'll hear, ladies and gentlemen, is that
11 one of the things that he found on the Internet was a cell-phone
12 application called, Jack'd, it was a social-networking site
13 that's for homosexuals.

14 It's kind of like, Facebook, where you can create a
15 profile for yourself and upload your picture if you want, you
16 can give details about yourself, your likes, your hobbies, your
17 dislikes. You can also look for other people on the Jack'd
18 cell-phone application, they also have profiles on there. And
19 if you want to have contact with someone, you can message back
20 and forth.

21 So, what you'll hear is, around the summer of 2013,
22 the victim in this case created a profile for himself. Now,
23 Jack'd requires -- like, some of the other social-networking
24 sites -- Jack'd requires you to be eighteen years of age. So,
25 you'll hear that the victim created a profile, that he

1 represented that he was eighteen years old at the time.

2 However, what he will explain to you is that when he
3 met this defendant online, he immediately told him, that he was
4 just fourteen years old.

5 You'll hear that when the victim found himself on this
6 Jack'd cell-phone application and he found this person, who he
7 knew by the name of Mike Dozer, that's an alias that he's
8 charged in the indictment with here today. He saw him on the
9 Jack'd cell-phone application and you'll hear the victim tell
10 you, that he was excited.

11 Because what you'll learn in this case is that,
12 Christopher Steele going as -- under the name of Mike Dozer --
13 had just started a career in the porn industry, that he was an
14 actor in some porn films.

15 And so, when the victim came across him on this Jack'd
16 cell-phone application, he was excited that somebody like the
17 defendant would ever want to talk to a fourteen-year-old boy
18 like him.

19 And so, you'll hear that from the very beginning --
20 the very first parts of their conversation -- this defendant
21 asked the victim to have sex with him, it was probably the third
22 thing he said to him online:

23 I want to have sex with you, are you really eighteen
24 years old?

25 You hear that the victim was truthful:

1 Well, you caught me, no, I'm only fourteen.

2 And his answer is part of the reason why we're here
3 today, because what you will hear is that the defendant then,
4 said:

5 I don't care, if you're eighteen years old, I like
6 my guys young and (indiscernible). But I still want to
7 have sex with you.

8 You will hear that conversation, because the victim
9 will come in and he will testify to it. But you will also see
10 that conversation, the exact words that were used by the victim
11 and the exact words that were used by this defendant, because
12 you will hear that when the police got involved in this
13 investigation, they captured that conversation, which was online
14 and over the Internet. So, you'll get to see where the victim
15 told him, he was fourteen and he still said, he wanted to have
16 to sex with him.

17 So, you will hear the defendant wasted no time,
18 because the very next day, this thirty-three-year-old man
19 traveled from his house in Delaware, where he still lived with
20 his mom and his dad in Pennsylvania to the victim's home.

21 You'll hear it was during the week, during the day, so
22 the victim's parents were both working. The defendant got up
23 bright and early and traveled to the victim's home, he met, they
24 went into the victim's bedroom and you will hear that they had
25 oral sex and that the defendant performed anal sex on that

1 fourteen-year-old boy, all without any protection, whatsoever
2 and so, the defendant left.

3 And then, we flash forward a couple of months, because
4 now the victim is starting to have some problems at home. He's
5 normally close with his parents, now, he's detached, he's not
6 speaking with them and they know, something is wrong with their
7 son, but they don't know what it is.

8 So, you'll hear one night, the victim's father, took
9 his iPad, took his cell phone and looked through it to see if he
10 could find out what was going on with his son. And what he
11 found was that conversation, I told you about. A grown man
12 talking to his son, his son, telling him that he's fourteen
13 years old and the grown man saying, I don't care, I'm still
14 gonna have sex with you.

15 And so, he confronted his son and his son told him
16 what happened and then, they went to the police.

17 You'll hear they went and first met with Detective
18 Ernie Morris, who will testify in this case. The victim and his
19 dad brought up the iPad and the cell phone. Detective Morris
20 captured a screenshot of that conversation, so that's what
21 you'll see here, that I've spoken to you about.

22 But at that point in time, they still only had his
23 identity as Mike Dozer and they knew he was around thirty-two
24 years of age, he lived in Delaware, he worked in the porn
25 industry.

1 So, you'll hear a little bit about how they identified
2 Mike Dozer as Christopher Steele, by e-mail records, by cell-
3 phone records and eventually, they obtained his true name and
4 his true address in Delaware.

5 And you'll hear that Detective Morris put together,
6 what was called a photo array, which is eight photographs of
7 people, who all resemble this defendant, similar backgrounds.
8 And he had the victim take a look at it to make sure, that the
9 person, he was describing, the person he met with, is the same
10 person that the police have now identified.

11 And what you'll hear is, that the victim, immediately,
12 picked out this defendant's picture, as the person he had
13 corresponded with over the Internet and is the person, who had
14 come up to his house and has sex with him.

15 So, Montgomery County issued a warrant for Christopher
16 Steele's arrest.

17 You will hear on December 13th of 2013, in the morning
18 hours, they traveled to Delaware, they worked with other police
19 officers from Delaware and with federal agents from Homeland
20 Security. They had an arrest warrant for Christopher Steele and
21 they also has a search warrant.

22 And you'll hear that he was arrested that morning
23 right outside of his house. The police confiscated his cell
24 phone.

25 And they also found in the house, the substance that

1 -- that you will hear referred to in this case, as coppers or
2 poppers, it's a little brown bottle that was found in the
3 defendant's room, that the defendant had the victim sniff just
4 before they had sex, because he told him it would enhance his
5 sexual pleasure. They confiscated that out of the defendant's
6 bedroom.

7 You'll hear from some witnesses in this case, that
8 there was a forensic examination that was done of the victim's
9 cell phone -- excuse me, not the victim -- of the defendant's
10 cell phone that was taken from his person at the time of his
11 arrest.

12 You'll hear, found on his cell phone, a sexually-
13 explicit picture that the victim had sent to him, on his cell
14 phone, four months after it was sent to him by the victim.

15 But what you will also hear in this case, ladies and
16 gentlemen, is the defendant's confession. Because you'll hear,
17 he was brought back to the police station in Delaware he was
18 given what we call, his Miranda rights, he had the right to
19 remain silent, he had the right to an attorney, he was given
20 that on a preprinted form, that had everything spelled out and
21 that had a portion saying, would you like to waive your rights
22 at this time? And he signed, that he would like to waive his
23 rights and give a statement to the police.

24 His confession ladies and gentlemen, we're going to
25 give to you, so you will see him reading the card, signing the

1 card. You will see the police, verbally, telling him his rights
2 and him telling the police, that he wished to waive his rights
3 and he wished to speak with the police at that time.

4 And then, ladies and gentlemen, you will hear him
5 confess on the statement, that he knew that the victim was
6 fourteen years old before he ever traveled to Pennsylvania, that
7 he had oral sex with that boy that day, that he had anal sex
8 with that boy. And that he gave him the popper substance that
9 the police took from his house. And all of it is on videotape.

10 And so, you will hear that he has been indicted, the
11 Judge explained some of -- a little bit -- of the charges that
12 you will be called upon to decide at the end of this.

13 And so, you know what evidence to look for as you hear
14 the testimony and see the exhibits that come before you.

15 The first charge that's been referred to is,
16 enticement, that he used the Internet, the Jack'd cell-phone
17 application to entice this fourteen-year-old boy to engage in
18 some kind of sex. You'll hear the victim tell you that, you'll
19 hear the defendant confess to that on videotape and you'll see
20 the capture of the chat, itself, where he tells him:

21 I want to have sex with you.

22 The second count of the indictment charges him with
23 traveling with the intent to engage in some kind of sexual
24 conduct. You'll hear the victim tell you, that's what he did.
25 You'll hear the defendant confess, that's what he did. You'll

1 see the chat.

2 And the third count charges him with receiving child
3 pornography, because what you will hear is that the photo -- the
4 sexually-explicit photograph -- was sent by the victim over the
5 Jack'd cell-phone application.

6 You'll also hear as part of this case, that we've
7 subpoenaed records from Jack'd, which is an overseas company and
8 they returned images to us that were contained on the
9 defendant's Jack'd cell-phone application. And among them, was
10 a different image, a second image, a sexual-explicit image of
11 the same thing.

12 So, at the end of this case, ladies and gentlemen,
13 after you've heard the testimony, seen all of the evidence, I
14 will come back again before you and I will ask you to return a
15 verdict that holds Christopher Steele responsible for what he
16 did to that fourteen-year-old boy. I am going to ask you to
17 find him guilty.

18 THE COURT: Mr. Wray.

19 MR. WRAY: Thank you, your Honor.

20 DEFENDANT'S OPENING STATEMENT

21 MR. WRAY: Good afternoon -- late afternoon -- ladies
22 and gentlemen of the jury.

23 My grandmother used to say, the thing is in the
24 details, which is important in jury trials, because often --

25 (Mr. Wray is not speaking at a microphone through the

1 opening statement.)

2 MR. WRAY: -- like in a -- we put our best foot
3 forward. There are a lot of details that when they come in to
4 play here, that you're going to hear, those details will give
5 you a broader view of what occurred and what didn't occur and
6 what is provable and what is not provable in the course of this
7 case.

8 There are number of police witness that you will hear
9 from, you'll hear from a number civilian witnesses as well.
10 That's about as bad as it gets, there's no pretend and it's --

11 But understand, that our legal system is premised upon
12 one and only one thing, presumption of innocence and throughout
13 this trial, just as the Judge has already told you, my client
14 has the right to that presumption. You must presume him
15 innocent all the way to the end of the case until you're told to
16 deliberate. You must keep that in your mind the entire time.

17 It is not my function nor is it my client's function
18 to build a small building of bricks and say, this is the proof
19 that my client is innocent.

20 This is the proof -- the big under -- to protect
21 myself from the Government -- to say, he's not guilty. And I do
22 not -- anything that the Judge has already told you. They have
23 to build their case.

24 And the Judge told you at the very beginning of every
25 case, just like when you publish a newspaper, you start with --

1 there is no evidence here. They have to build a case to present
2 evidence and build the case.

3 I will tell you one thing that will come in the course
4 of this case, there is a person named, Mike Dozer. And Mike
5 Dozer is a porn star. And Mike Dozer became a porn star, the
6 end of May of 2013 and prior to approximately, May 28th, Mike
7 Dozer did not actually exist.

8 He made many movies, he made about sixteen movies.
9 But the Mike Dozer that made movies is not Mr. Steele and you
10 will hear evidence and testimony to that effect. But that in
11 the pursuit of this pornography -- porn career in adult films is
12 a legal business, he was Mike Dozer while he made those films.

13 You will hear testimony that Mr. Steele was working
14 full time for an industrial fumigation business. He worked for
15 a business where they would go in on weekends to warehouses,
16 office buildings and fumigate buildings to get rid of all the
17 bugs and what not that are in buildings and that he worked that
18 job full time.

19 And part time, he pursued a career in adult films and
20 was -- he's successful at it and you'll hear testimony about
21 that.

22 And you'll also hear testimony that Mike Dozer is on
23 the Internet a lot, his pictures are all over the Internet, he
24 has a Twitter account, he has a Facebook account and you'll hear
25 testimony that those were used to push and -- push his career --

1 to sell -- sell videos of his adult-film life.

2 You'll also hear testimony that that image is wildly
3 held. And as the Government has pointed out, you will hear
4 testimony about this Jack'd system. Jack'd is a cell-phone only
5 application, it only operates on cell phones. You will hear
6 testimony how it operates, how it works, the victim will tell
7 you how it works. Mr. Steele will tell you how it works.
8 Because it includes that round and you can test messages back
9 and forth. And that -- whether a person tells you, they are,
10 they are on that.

11 If you say -- if you're under eighteen -- you can get
12 onto Jack'd, it does not say, it's only for adults, as the
13 Government has already told you, even if you're underage, you
14 can pretend to be an adult.

15 Through their testimony -- and from Mr. Steele --
16 that, yes, he did have one conversation with the victim. And
17 you will hear testimony that he catfished him, pretended to be
18 in to younger boys. And as soon as the admission came, that
19 this was an under-aged male, Mr. Steele -- you'll hear testimony
20 -- that he blocked him and he never spoke with him again.

21 There is a lot of evidence you'll need to hear here.
22 Like the victim in this matter, you will need testimony from Mr.
23 Steele that he is gay, he is a homosexual. You will hear
24 testimony that he in a full-time relationship with someone and
25 like, all relationships, it had its ups and downs and you'll

1 hear all of the details of that.

2 And after you hear all of that evidence, you will
3 understand, why my client confessed, pure and simple.

4 I know this case is hard, I know all of your probably
5 sat here and guessed, what is this case about? Openings
6 statements, pretty much are the opening book flap for a case,
7 the opening book flap said, oh, this is what the book is about.
8 This is going to be hard, this will be hard stuff to hear.

9 And the whole time you hear it, as difficult as it is,
10 as difficult as -- my client has to find, the slightest
11 presumption of innocence. I need you to listen to all of that
12 testimony very carefully. These are common-sense, real life's
13 experience.

14 And I'd ask you to do more than just that, I'm going
15 to ask you to sit there and say, is this real evidence or is it
16 something else?0

17 And when, we're done, I'm going to ask you to acquit
18 Mr. Steele. I'm going to ask you to acquit him of crossing
19 state lines, of enticing the victim in this matter and of the
20 child-pornography charges. Because as this case proceeds, I
21 will do my job and I expect you to do your job to see that that
22 building of guilt cannot be made.

23 I know it's been a long day. I implore you, you just
24 keep an open mind here. You must not make decisions right now.
25 You must not drawn your conclusions. You must not let your

1 biases -- human frailties -- come in to play here.

2 You must throughout this trial, respect and protect my
3 client's presumption of innocence from beginning to end until
4 the Judge says, it's time to deliberate, you may not for even a
5 moment say, well, that's it, I've heard enough, you must not.

6 Our legal system insists upon it and it's what my
7 client has been promised by our constitutional system. It's
8 been a long day. Thank you very much for your kind attention.

9 THE COURT: Very well.

10 Members of the jury, it is, approximately, 4:29, so I
11 am going to give you some admonitions and I'd ask that you'd
12 keep them in mind as you begin with your role as jurors in this
13 case.

14 Keep in mind, that your job is to keep an open mind,
15 do not make up your mind about the verdict until you have heard
16 all of the evidence in this case, I give you the final
17 instructions about the law at the end of the trial. And you
18 have had an opportunity to discuss the evidence with each other
19 in the jury room during your deliberations.

20 From now on, do not discuss the case among yourselves
21 until the end of the trial, when you go back into the jury to
22 begin your deliberations in an effort to render a verdict in
23 this case.

24 You need to allow each juror, the opportunity to keep
25 an open mind throughout the entire trial, so during the trial,

1 you may talk to your fellow jurors about anything else of a
2 personal nature or of comment interest, but not under any
3 circumstance are you to talk to them about or comment about the
4 testimony that you are listening to or the evidence that you are
5 considering.

6 During the trial, you should not speak to any of the
7 parties, any of the lawyers or any witnesses involved in this
8 case, not even to pass the time of day. If anyone -- a lawyer,
9 a party, a witness -- does not speak to you when they see you in
10 the hallway or ride with you in the elevator or the like and
11 like I said before, they're going to avoid doing that, remember,
12 it is because they are not supposed to talk to you or visit with
13 you, either, because that could create serious problems for this
14 Court.

15 Do not talk with anyone else or listen to others talk
16 about this case until the trial has ended and I have discharged
17 you as members of the jury in this case. It is important, not
18 only that justice is done in this case, but that you give the
19 appearance of doing justice.

20 If anyone should try to talk to you about the case
21 during the course of the trial, I am going to direct that you
22 report it to me, immediately, through my Courtroom Deputy, Ms.
23 Wertz, who you've already met, so that I could take appropriate
24 steps to make sure that both sides get a fair and adequate
25 consideration of the evidence. And if that happens, do not

1 discuss the situation with your other fellow jurors.

2 Do not discuss this case with anyone outside of the
3 courtroom or at home, including your family and friends. You
4 may tell your family, your friends, that you have been selected
5 as a member of the criminal trial jury in this case. And you
6 may even tell them, that you think it's going to take,
7 approximately, a week to try the case. However, you should also
8 tell them, that I instructed you not to talk to them any more
9 about the case and that you should not talk to them any further
10 about it.

11 The reason is, that sometimes, someone else's ideas or
12 thoughts can influence yours. And your thinking should be
13 influenced by nothing else, other than what you learn here in
14 the courtroom when we are all together.

15 Until the trial is over and your verdict is announced,
16 do not watch or listen to any television or radio news programs
17 or reports about this case or read any news stories or Internet
18 stories or articles about the case or anyone connected with it,
19 either.

20 And again, this sounds repetitious, but I am going to
21 repeat it throughout the trial, because it is really important,
22 especially, in light of the fact that you've heard during the
23 opening statements, that the lawyer has made reference to the
24 Internet, Twitter accounts and Facebook accounts and web page
25 profiles, et cetera.

1 So, do not be tempted at all, do not use a computer, a
2 cellular phone or other electronic devices or other tools of
3 technology, while the courtroom or -- in the courtroom -- or
4 during deliberations. These devices may be used during breaks
5 or recesses, only for personal uses, only for personal uses.
6 But may not be used to obtain information about this case from
7 any outside source or for you to send out information to the
8 world or disclose information about this case or any of the
9 issues in this case to the world.

10 So, it is important that you heed my instructions, you
11 may not communicate with anyone about this case on your cell
12 phone, through your e-mails, Blackberry, iPhone, text messaging
13 or on Twitter through any blog or website through any Internet
14 chat room or by way of any other social networking websites,
15 including Google, Facebook, My Space, Linked-In and YouTube.

16 And you may not use any similar technology or social
17 media, even if I have not specifically -- specifically mentioned
18 it in these instructions.

19 Also, remember, do not conduct research or make an
20 investigation of your own about any matters relating to this
21 case or this type of trial. And this means, for example, that
22 you must not visit the scene, conduct any experiments of any
23 kind, consult any reference work or dictionaries or search the
24 Internet websites or blogs for any additional information or use
25 a computer, a cellular phone or other electronic devices or

1 tools of technology or any other method, to obtain information
2 about this case, this type of case, the parties in this case or
3 anyone involved in this case.

4 Do not try to find out information from any source
5 outside the courtroom. The information you need to decide this
6 case, will be presented to you in the presence of the Court and
7 the Government and the defendant.

8 So, please, do not try by any way, means -- or any
9 other means -- to supplement your knowledge about any of the
10 issues in this case or this type of case or find out additional
11 information. So, do not be tempted, because that could create
12 serious problems for this Court. Again, it would be improper
13 for you to supplement your knowledge about this case on your
14 own.

15 And finally, like, I said before, do not concern
16 yourselves with or consider the possible punishment that may be
17 -- that might be imposed, if you return a verdict of guilty in
18 this case.

19 In a few minutes, I am going to dismiss you and I need
20 to speak to my Deputy for one minute, before I dismiss you. So,
21 Ms. Wertz, could you come to the side?

22 (Discussion held off the record at 4:33 p.m.)

23 THE COURT: Right.

24 So, members of the jury, one last thing.

25 We are going to give you, sort of a tentative

1 schedule, we usually go from 9:00 to 5:00. Tuesday and
2 Wednesday, I will only go till 4:30. Thursday, if we need to,
3 it will be from 9:00 to 4:30 as well. And Friday, it will be
4 from 9:30 till 5:00, if we need -- if we need Friday, if we need
5 to come back Friday. So, that's the tentative -- the tentative
6 schedule that I will put out.

7 And remember, I said, that tomorrow between 11:00 and
8 11:30, I may have to take a break a little bit earlier.

9 My -- my Courtroom Deputy will distribute the schedule
10 to you, but I really need you to be here, promptly, at 9:00
11 a.m., 9:00 a.m.

12 I get here at seven o'clock in the morning and I come
13 from about an hour and a few minutes away, so I need you to get
14 here on time, so that we could get this case done in this week.

15 With that, I am going to direct my Courtroom Deputy,
16 Ms. Stacy Wertz to take you to the jury room. Have a nice
17 evening and I will see you here promptly tomorrow at 9:00 a.m.
18 Okay.

19 ESR OPERATOR: All rise.

20 (Jury out at 4:35 p.m.)

21 THE COURT: Okay.

22 Anything I need to do -- we have a few minutes --
23 anything I need to do right now?

24 MS. ROTELLA: Sir, because I think that, perhaps, I
25 may end up finishing tomorrow, I was planning on putting the FBI

1 agent on.

2 There is a -- there is also a person from AT&T which I
3 neglected to mention, he's -- I mean, those are the two
4 witnesses, that would be called and neither is an expert witness
5 for the cell-site information.

6 THE COURT: Could you -- is there a stipulation, is it
7 a custodian?

8 MS. ROTELLA: He's -- it's not a custodian, but he
9 would testify as to the location of the cell-phone towers. I
10 mean, he's not -- either one or the other is necessary as a
11 witness -- a lay witness --

12 THE COURT: All right.

13 MS. ROTELLA: -- we don't ordinarily, necessarily,
14 need both.

15 But your Honor did not issue your final ruling on
16 that, so --

17 THE COURT: No, I am going to put it out in the
18 morning.

19 MS. ROTELLA: Oh, okay.

20 THE COURT: I've been a little busy --

21 MS. ROTELLA: The only -- I know, you have.

22 THE COURT: -- trying to move the case.

23 MS. ROTELLA: I know, sir.

24 I -- I just didn't know if I -- so, I'll have him
25 prepared to be here then and I'll just wait to hear what you

1 have to --

2 THE COURT: Okay.

3 MS. ROTELLA: -- say.

4 THE COURT: Very well.

5 MS. ROTELLA: Thank you.

6 THE COURT: I'll try to give you a ruling on it by --
7 by 8:30 tomorrow morning. Yes?

8 MR. WRAY: I'll wait to hear what the Court's ruling
9 is.

10 It was my impression that the Court may give me some
11 latitude on cross-examination for a mini-Dalbert, if --

12 THE COURT: I -- I --

13 MR. WRAY: -- not on direct, but I was unsure.

14 THE COURT: -- I -- on the Government's -- on the
15 Government's proposed witness, I think the Third Circuit Court's
16 decision and the decisions across this country are pretty clear.
17 I am pretty comfortable that I am not going to give you a
18 Dalbert hearing, because I don't think you're entitled to one.

19 And the other thing is, I'm pretty comfortable that
20 they are calling him or her as a -- a fact witness with -- with
21 regards to lay -- lay opinions and that's permissible, what they
22 intend to do. So, I am likely to allow that testimony to be
23 presented.

24 So, I'm pretty clear that, I think the Government is
25 going to be able to present their witness.

1 What I have not ruled on is his request for an expert
2 on his case, that I'm taking it under advisement, understanding
3 that your objection is that, he has notified you very late in
4 the game as to the name of the witness.

5 But I am not so sure, if he's calling an expert or
6 just a fact witness for the same thing, in which case, you know,
7 I don't know whether you -- you have a point, because what is
8 good for you is --

9 MS. ROTELLA: Well --

10 THE COURT: -- probably, good for them.

11 MS. ROTELLA: -- no, no.

12 And I understand that, but the witness in this case
13 will testify, it's a totally separate type of information.

14 I -- I would just ask, if he's going to offer him then
15 as a fact witness, I -- it's still unclear to me -- but if he
16 offers him as a fact witness, I'm not certain how a person, who
17 is employed in some corporation is going to be able to testify
18 as to how the Jack'd works --

19 THE COURT: All right.

20 MS. ROTELLA: -- when he's never been employed by
21 Jack'd. It's a business that's owned overseas, I ---

22 THE COURT: Very well.

23 MS. ROTELLA: -- all of those things.

24 THE COURT: Okay.

25 MS. ROTELLA: I don't know that he's set -- can set a

1 proper foundation to have anything admitted through that
2 particular --

3 THE COURT: Well, the rule --

4 MS. ROTELLA: -- witness.

5 THE COURT: -- said, you could test -- you can -- if
6 -- if he meets the predicate of the rule, then it may be
7 admissible --

8 MS. ROTELLA: Yes. But --

9 THE COURT: -- but he has to demonstrate that.

10 I -- I -- if you want you know, you might want to
11 proffer on the record, what is it that you want, if -- if you
12 know.

13 MR. WRAY: Ah, I will need to consult with Mr. Wentz,
14 but I believe that I -- the testimony that I need from him, can
15 be elicited through Rule 1006, simply, summarizing how that the
16 application collects and -- and -- I'm not a hundred percent
17 sure. I may not even call him, Judge at this point.

18 THE COURT: All right.

19 MR. WRAY: So --

20 THE COURT: Before he testifies then -- before
21 anything -- we'll recess and talk about it.

22 But if you decide not to call him, let the Government
23 know, so they don't have to waste their time as soon as
24 possible.

25 MR. WRAY: Of course.

1 THE COURT: Fair?

2 MS. ROTELLA: Thank you, your Honor.

3 THE COURT: All right.

4 He's not going to testify, unless you let us know
5 whether you -- what -- what areas he's going to cover.

6 If you make that decision, let the Government know --

7 MR. WRAY: I'll --

8 THE COURT: -- you don't intend to call him, as soon
9 as possible, so that we don't have to waste our time.

10 MR. WRAY: I will, your Honor.

11 THE COURT: Fair?

12 MR. WRAY: Fair enough.

13 THE COURT: All right. Good.

14 If you need to bring it to my attention, I will be
15 here tomorrow at seven o'clock.

16 MS. ROTELLA: Thank you, sir.

17 THE COURT: Again, I said, 8:30, if you need anything
18 for me to discuss, 8:00 -- eight o'clock. I am usually here,
19 but you've got to let me know the day before, I am usually here,
20 so I will be make myself available.

21 Do you have anything for me tomorrow or do I -- can I
22 go running with my -- my colleague, Judge Rice?

23 MS. ROTELLA: Feel free to run, your Honor.

24 THE COURT: All right.

25 You don't need me in the morning at 8:30, right?

1 MR. WRAY: Not unless I hit a truck on my way in,
 2 Judge.

3 (Adjourned in this matter at 4:40 p.m.)

4 * * *

I N D E X

(The *voir dire* of the jury is not transcribed at this time.)

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C E R T I F I C A T E

I do hereby certify that the foregoing is a correct transcript of the electronic-sound recording of the proceedings in the above-entitled matter.

Date: February 20, 2016

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